STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHNNY TIPPINS,

Defendant-Appellant.

UNPUBLISHED
May 14, 2020

No. 347903
Chippewa Circuit Court
LC No. 18-003552-FH

Before: CAVANAGH, P.J., and SAWYER and RIORDAN, JJ.

PER CURIAM.

Defendant was convicted by a jury of possession of a weapon by a prisoner, MCL 800.283(4), and sentenced as a fourth-offense habitual offender, MCL 769.12, to serve 4 to 20 years' imprisonment. Defendant appeals by right. We affirm.

I. FACTUAL BACKGROUND

Defendant was a prisoner at the Chippewa Correctional Facility serving a sentence of 26 to 50 years' imprisonment for second-degree murder. On December 13, 2017, Assistant Resident Unit Supervisor (ARUS) Jeff Clark received a note from an anonymous prisoner stating that defendant was carrying a weapon in the crotch area of his pants. ARUS Clark turned the note over to Correctional Officer Jeffrey Jenkins and accompanied him to supervise a possible strip search of defendant. The officers pulled defendant aside to an isolated area on his way to lunch and asked him if he was carrying a weapon. Defendant voluntarily pulled a belt tied around a padlock out of the front of his pants and turned it over to the officers. The padlock was labeled with defendant's prison ID number, #342855.

The next day, Officer Jenkins filled out a critical incident report, which stated: "I received a [note] from an unknown prisoner stating the [sic] Tippins 661668 was carrying a lock on a belt inside the front of his pants." Officer Jenkins acknowledged that the ID number in his report did not match defendant's ID number and that what he wrote was a clerical error. He testified that he did not remember if the note identified defendant by any number. Both officers testified that they did not know what happened to the note, but believed that it had likely been destroyed because correctional officers generally do not keep such notes. A detective with the Michigan State Police

misspelled defendant's name and repeated the incorrect ID number in his incident report. Defendant argues that the note itself contained these mistakes.

Defendant argues that the correctional officers violated his constitutional right against unreasonable search and seizure because the anonymous, incorrect, and unsubstantiated tip did not give officers enough reasonable suspicion to search defendant. Therefore, defendant argues, evidence of the weapon seized as a result of the search should be suppressed as fruit of the poisonous tree. We disagree because the officers did not commit a search that would trigger Fourth Amendment protection.

II. ANALYSIS

We review de novo both constitutional questions, *People v Pipes*, 475 Mich 267, 274; 715 NW2d 290 (2006), and a trial court's ruling on a motion to suppress, *People v Steele*, 292 Mich App 308, 313; 806 NW2d 753 (2011).

The United States and Michigan Constitutions prohibit "unreasonable searches and seizures." US Const, Am IV; Const 1963, art 1, § 11. "A search within the meaning of the Fourth Amendment occurs when an expectation of privacy that society is prepared to consider reasonable is infringed." *People v Chowdhury*, 285 Mich App 509, 523; 775 NW2d 845 (2009) (quotation marks and citations omitted). Generally, a search absent a warrant is per se unreasonable unless it falls under certain specific exceptions. *Katz v United States*, 389 US 347, 357; 88 S Ct 507; 19 L Ed 2d 576 (1967). Evidence obtained as the result of an illegal search is generally inadmissible as "fruit of the poisonous tree." *People v Stevens*, 460 Mich 626, 634; 597 NW2d 53 (1999).

Defendant concedes that he voluntarily admitted possession of the weapon to the officers. Regardless, defendant argues that the officer's decision to approach him, pull him aside, and ask if he had a weapon constituted a search that violated the Fourth Amendment. Defendant relies on *Northrop v Trippett*, 265 F3d 372, 376 (CA 6, 2001), in which the court determined that a tip from an anonymous informant without other evidence of reliability was not sufficient to provide officers with reasonable suspicion to seize and search a suspect. *Id*. at 381, 383. Defendant argues that, here, the officers' initial approach was unlawful because the informant's note did not provide any reliable information to give the officers reasonable suspicion that defendant committed a crime.

However, there is no evidence that the informant's note was inaccurate, as defendant contends. Officer Jenkins testified that he first made the ID-number error on his critical incident report, not that it was incorrect on the informant's note. And although the anonymous nature of the note may make it less reliable, *Northrop* is not applicable here because there was no search in this case to trigger constitutional protection. Unlike in *Northrop*, 265 F3d at 383, where the officers conducted a subsequent search of the defendant's bag, in this case, defendant voluntarily handed over the weapon after the officers approached him. The officers testified that they did not need to conduct a search and there is no evidence that they told defendant they were going to search him. Therefore, defendant was not unlawfully "searched" for Fourth Amendment purposes.

Further, this Court has stated that "the Fourth Amendment protection against unreasonable searches and seizures . . . is inapplicable to prisoners." *People v Ramsdell*, 230 Mich App 386, 402; 585 NW2d 1 (1998). But even if defendant had a limited expectation of privacy, that interest

yielded to the government's substantial interest in prison safety. A defendant's limited expectation of privacy must yield to the institutional needs and objectives of the prison system—including internal security—if those needs supersede the constitutional protection at issue. *Hudson v Palmer*, 468 US 517, 524; 104 S Ct 3194; 82 L Ed 2d 393 (1984). Here, defendant did not have a reasonable expectation of privacy against a warrantless search of his person, particularly because the officers were responding to a specified threat and any privacy right that defendant had yielded to the legitimate interest in preserving prison security. Therefore, there was no unlawful search for Fourth Amendment purposes, and the trial court did not err by admitting evidence of the weapon at trial.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Michael J. Riordan